

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

**PERSONALIZED MEDIA
COMMUNICATIONS, LLC**

Plaintiff,

v.

GOOGLE, LLC, ET AL

Defendants.

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Case No. 2:19-cv-00090-JRG

**MINUTES FOR PRETRIAL CONFERENCE
HELD BEFORE U. S. DISTRICT JUDGE RODNEY GILSTRAP
October 26, 2020**

OPEN: 9:09 a.m.

ADJOURN: 5:57 p.m.

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|---------------------------|-----------------------------------|
| ATTORNEYS FOR PLAINTIFF: | See attached. |
| ATTORNEYS FOR DEFENDANTS: | See attached. |
| LAW CLERKS: | Adrienne Dellinger Lee Matalon |
| COURT REPORTER: | Susan Zielie |
| COURTROOM DEPUTY: | Jan Lockhart |

| <u>TIME</u> | <u>MINUTES</u> |
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| 9:09 a.m. | Court opened. Mr. Grinstein introduced counsel for Plaintiff. Mr. Mann introduced counsel for Defendants. |

| <u>TIME</u> | <u>MINUTES</u> |
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| | The Court gave the parties instructions for Jury Selection and Trial. Jury Selection will be held on Monday, November 2, 2020. Opening statements and evidence are scheduled to begin after Jury Selection. The Court and staff are in chambers each morning at 7:30 a.m. The trial will start each day at 8:30 a.m. Exhibits used the prior day will be read into the record prior to the jurors returning to the courtroom (usually around 8:15 a.m.). The Court allotted 13 hours per side to try the case (this time does not include the time for voir dire, opening statements and closing arguments); 30 minutes a side for voir dire (of this time, a 3-minute, high level, overview of the case may be given); 30 minutes for opening statements and 40 minutes a side for closing arguments; 8-member jury to be selected (four strikes per side); procedures for disputes discussed. Court to be notified by 10:00 p.m. each night of disputes re demonstratives to be used the next day, or that there are no disputes. Binders with disputed information are to be prepared and submitted to the Court at 7:00 a.m. the following day. Deposition disputes are to be given to the Court the day before they are going to be used. Rule 50(a) motions will be heard after ALL evidence is concluded. The informal charge conference will be held in chambers after Rule 50(a) motions are heard. A formal charge conference will follow afterward. The Court discussed policies and the Standing Order regarding the sealing of the courtroom. Juror questionnaires and the manner of use thereof were discussed, i.e., copies of the Juror Questionnaire may be obtained from the Deputy-in-Charge, Kecia Clendening. Juror notebooks are to be prepared by counsel and delivered to the Court by 12:00 p.m. on October 29, 2020. Since patents are large, double-sided printing okay. Each notebook should include the Patents-in-Suit, the Court's claim construction chart, tabbed witness pages (each witness page should contain a head and shoulders photograph of the witness followed by ruled lines on the remainder of the page), a 3-hole punched legal pad and a non-clicking pen. The Court also gave guidance regarding expert witness testimony. Exhibits will be pre-admitted. Only exhibits used during the trial will be considered as part of record. Mock Jury Study discussed. Witness lists are to be revised and filed by the parties within 24 hours as to May Call Witnesses and Will Call Witnesses. The Court set aside October 27, 2020 at 9:00 a.m. for an additional pretrial, if needed. |
| 9:51 a.m. | Mr. Subramanian argued Personalized Media's Motion for Summary Judgment as to Google's License Defense (Dkt. No. 227). Mr. Verhoeven argued on behalf of Defendants. The Court DENIED the motion for the reasons set forth on the record at the hearing. The Court GRANTED the motion re Schonfeld. |
| 11:00 a.m. | Recess. |
| 11:09 a.m. | Court reconvened. |
| 11:10 a.m. | The Court heard argument on PMC's Motion for Summary Judgment as to Inequitable Conduct (Dkt. No. 229). Ms. Xi argued on behalf of Plaintiff. Mr. Corredor argued on behalf of Defendants. The Court GRANTED the motion for the reasons set forth on the record at the hearing. |
| 11:55 a.m. | Lunch recess. |
| 1:05 p.m. | Court reconvened. |

| TIME | MINUTES |
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| 1:07 p.m. | The Court heard argument on PMC's Motion for Summary Judgment as to Equitable Defenses (Dkt. No. 230). Ms. Xi argued for Plaintiff. Mr. Corredor argued on behalf of Defendants. The Court DENIED the motion for the reasons set forth on the record at the hearing. |
| 1:32 p.m. | The Court CARRIED the motion as to PMC's Daubert Motion as to Mr. Godici (Dkt. No. 228). |
| 1:35 p.m. | The Court heard argument on Google's Motion for Summary Judgment of No Direct Infringement and No Induced Infringement (Dkt. No. 235). Mr. Perlson argued on behalf of Google. Ms. Lusztig argued on behalf of Plaintiff. The Court DENIED the motion. |
| 2:23 p.m. | The Court heard argument on Google's Motion to Strike Untimely Infringement Theories (Dkt. No. 222). Mr. Tung argued on behalf of Google. Ms. Lusztig argued on behalf of Plaintiff. The Court DENIED the motion. |
| 2:45 p.m. | The Court heard argument on Google's Daubert motion as to Dr. Xiong (Dkt. No. 231). Mr. Tung argued on behalf of Google. The Court DENIED the motion. |
| 2:57 p.m. | Recess. |
| 3:26 p.m. | Court reconvened. The Court heard argument on Google's Motion for Summary Judgment Regarding Invalidity (Dkt. No. 234). Mr. Bramhall argued on behalf of Google. Ms. Chen argued on behalf of Plaintiff. The Court DENIED the Motion. |
| 3:57 p.m. | Mr. Grinstein addressed narrowing of the case. |
| 4:00 p.m. | The Court heard argument on Google's Motion for Summary Judgment as to Noninfringement (Dkt. No. 236). Mr. Verhoeven argued on behalf of Google. Mr. Subramanian argued on behalf of Plaintiff. The Court DENIED the Motion. |
| 4:46 p.m. | The Court heard argument on Google's Motion to Strike Untimely Priority and Second Considerations Opinions (Dkt. No. 233). Mr. Hefazi argued for Google. Ms. Chen argued on behalf of Plaintiff. The Court DENIED the motion. |
| 5:07 p.m. | Courtroom sealed. |
| 5:08 p.m. | The Court heard argument on Google's Daubert Motion as to Mr. Kemmerer (Dkt. No. 232). Mr. Anderson argued on behalf of Google. Ms. Black argued on behalf of Plaintiff. |
| 5:29 p.m. | Courtroom unsealed. Recess. |
| 5:33 p.m. | Court reconvened. Courtroom sealed. The Court heard argument on Google's Daubert Motion as to Mr. Kemmerer (Dkt. No. 232). Mr. Anderson argued on behalf of Google. Ms. Black argued on behalf of Plaintiff. |
| 5:54 p.m. | Courtroom unsealed. The Court DENIED the motion. |
| | Will reconvene at 9:00 a.m. Parties are to meet and confer re remaining issues. |
| 5:57 p.m. | Court adjourned. |